

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

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INDUSTRIAL PROCESS TECHNOLOGY, * Civ. 08-1007
INC., a North Dakota corporation,

Plaintiff,

vs.

WEB WATER DEVELOPMENT
ASSOCIATION, INC., a South Dakota
corporation,

Defendant.

ANSWER AND COUNTERCLAIM

* * * * *

Defendant, for its Answer to Plaintiff's Complaint, hereby states as follows:

ANSWER

1. Defendant denies all allegations contained in Plaintiff's Complaint except those hereinafter specifically admitted.

2. Defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 11, 18, 19, 20, 21, 24, 26 and 30 of Plaintiff's Complaint.

3. Defendant denies the allegations contained in paragraphs 10, 13, 14, 16, 31, 32, 33, 35, 36, 37, 38, 39 and 40 of Plaintiff's Complaint.

4. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 6, 12, 15, 17, 22, 23, 25, 27 and 28 of Plaintiff's Complaint.

COUNTERCLAIM

Defendant, for its Counterclaim against Plaintiff, hereby states and alleges as follows:

COUNT I

1. Under part 2.01F of § 15093 of the Technical Specifications of the contract entered into between the parties, Defendant was required to install valves designed for no less than 175 psi working pressure with no leakage.

2. The valves originally installed by Plaintiff failed to comply with the 175 psi requirement.

3. As a result of Plaintiff's failure to comply with the contract's Technical Specifications, Defendant required Plaintiff to replace the deficient valves.

4. Substantial delays were encountered in getting the valves replaced, which resulted in the failure of Plaintiff completing the contract in a timely manner.

5. Under Article 3.1 of the Agreement between Plaintiff and Defendant, work to be performed by Plaintiff was to be substantially completed on or before May 15, 2005. The substantial completion date was subsequently extended to July 15, 2005.

6. Plaintiff did not obtain substantial completion of the contract until July 31, 2007, which was 746 days beyond the substantial completion date agreed to by the parties.

7. Under Article 3.2 of the parties' Agreement, Plaintiff agreed to pay Defendant \$400 for each day the project was delayed beyond the substantial completion date.

8. Under the terms of the parties' Agreement, Defendant is entitled to liquidated damages in the sum of \$298,400.

COUNT II

9. Defendant hereby incorporates Paragraphs 1-8 of this Counterclaim as though fully set forth herein.

10. Due to the deficient valves supplied by Plaintiff, various leaks developed to Defendant's pipeline.

11. Plaintiff was unavailable to repair some of these leaks which necessitated Defendant performing that work.

12. Defendant expended funds to fix leaks which should have been the responsibility of Plaintiff.

13. Defendant is entitled to compensation for the amounts spent in repairing leaks in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiff prays for the following:

1. Dismissal of Plaintiff's Complaint;
2. An award of damages pursuant to its Counterclaim minus the amount retained by Defendant;
3. An award of pre and post-judgment interest on its Counterclaim;

4. An award of its costs and disbursements; and
5. Such other relief as to the Court seems just and equitable.

DEFENDANT HEREBY DEMANDS A TRIAL
BY JURY ON ALL ISSUES SO TRIABLE

Dated this 25th day of June, 2008.

SIEGEL, BARNETT & SCHUTZ, L.L.P.

/s/ Reed Rasmussen

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CERTIFICATE OF SERVICE

The undersigned, attorneys for Defendant, hereby certifies that on the 25th day of June, 2008, a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM was sent by electronic transmission to the following:

Mr. James M. Cremer
Bantz, Gosch & Cremer
PO Box 970
Aberdeen, SD 57402-0970

Dated this 25th day of June, 2008.

SIEGEL, BARNETT & SCHUTZ, L.L.P.

/s/ Reed Rasmussen